

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Inventor:	Gabriel Beged-Dov	Examiner:	Bena B. Miller
Application No:	09/915,978	Group Art Unit:	3725
Filing Date:	July 25, 2001	Confirmation No:	8178
Title: GYROSCOPICALLY STABILIZED THROWABLE IMPLEMENT			

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Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450**

APPELLANTS'/APPLICANT'S OPENING BRIEF ON APPEAL UNDER 37 CFR

§41.37

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Sir:

This Brief is submitted in support of the Appeal in the above-identified application.

1. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

2. RELATED APPEALS AND INTERFERENCES

Appellant, Appellant's legal representative, and Assignee are unaware of any other appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF THE CLAIMS

Claims 1-5, and 13 stand finally rejected by the Examiner and are being appealed herewith. Claims 6-12 and 14-15 have been cancelled.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the third Office action mailed March 2, 2005.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Appellant's invention concerns a gyroscopically stabilized throwable implement that includes a disk-shaped body having at least a first surface and a second surface configured to provide aerodynamic lift when thrown and gyroscopic stability when rotated about an axis of rotation.¹ The throwable implement 301 includes a convex top surface² 305 (i.e. first surface) and a concave under surface³ 401 (i.e. second surface) formed in a body having a shape arranged for stable flight. The top or convex surface 305 of the body is maintained without change from a conventional FrisbeeTM and may include advertisement or other adornment in the discretion of the designer.⁴ The throwable implement also includes spring fingers

¹ Page 2, paragraph 5.

² Page 4, paragraph 17, referring to Fig. 3.

³ Page 5, paragraph 18, referring to Fig. 4.

⁴ Page 7, paragraph 22, referring to Fig. 7.

309' that protrude away essentially perpendicularly from the under surface 401 to frictionally capture a recordable medium, i.e. CD 101 (a Compact Disk) at the CD's through hole, to the body of the throwable implement.⁵ The recordable medium is held parallel to the concave under surface 401 (i.e. second surface), and disposed with the mass of the recordable medium essentially balanced about the axis of rotation. In this embodiment, the spring fingers 309' are affixed to the under surface 401, by way of a cantilever portion and are arranged in a circle having a center coincident with the center of rotation 407 of the implement.⁶ Although this embodiment offers increased physical protection to the CD, the compact disk's presence is not as readily observed and any advertisement or promotional material that is present on a surface of the CD is not as prominent. In order to compensate for this hiddenness, the body of the implement can be formed of a transparent plastic, either in whole or just in an area near the crown of the body.⁷

The curved upper convex first surface and an angle of attack provide lift to enable flight for the throwable disk. Since the FrisbeeTM (i.e. gyroscopically stabilized throwable implement) is launched with a spin imparted by the thrower and since a significant proportion of the mass of the disk is located in an annular band at the circumferential edge of the disk, a substantial amount of angular momentum is created around the axis of rotation of the disk. This angular momentum gyroscopically resists changes in the direction of the angular momentum vector along the axis of rotation and along with the aerodynamic lift from the convex first surface results in a long and interesting flight of the gyroscopically stabilized throwable implement.⁸

The recordable medium (i.e. information storage medium) may be a CD, a MiniCD, DVD, or a non-diskoidal shaped disk such as a credit card disk and is

⁵ Page 7, paragraph 22, referring to Fig. 7; also see paragraphs 19 and 20 referring to Figs. 5A-5B for more details on the spring fingers.

⁶ *Id.*

⁷ *Id.*

⁸ Page 3, paragraph 15.

removably attached to the concave second surface of the gyroscopically stabilized throwable implement.⁹

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the final Office action:

A. Whether claim 1 was improperly rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Adoma (DE20008512U1). Adoma does not disclose all of Appellant's claim elements and limitations as arranged in independent claim 1. In addition, Adoma does not teach or suggest the claim elements and limitations of independent claim 1. Further, the use of the 35 U.S.C. 102/103 rejection in this case is improper.

B. Whether claims 1, 2, and 13 were improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Adoma. Examiner's comments combined with Adoma do not teach or suggest Appellant's claim limitations. Also, there is no motivation to combine Examiner's comments with the single reference of Adoma.

C. Whether claims 1-5 and 13 were improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Adoma in view of Nusselder (US Patent No. 4,535,888) or Otsuka et. al. (US Patent No. 4,793,479). Neither of the cited references Adoma, Nusselder, or Otsuka, taken either individually nor in combination therewith, teach or suggest Appellant's claimed invention. Also, there is no motivation for combination of the cited references.

7. ARGUMENT

Appellant's claimed invention covers, among other claimed elements, "a plurality of flexible fingers disposed in a first circle on said second surface and

⁹ Page 4, paragraph 16, referring to Figs. 1-2, reference numerals 101 and 205; Also See, page 3, paragraph 14 for reference to DVD.

protruding for a predetermined distance away from said second surface." One of the central issues in this matter is whether any one or combination of the references cited by the Examiner either discloses, or in the alternative, teaches or suggests combining references against the Appellant's claimed invention of a throwable implement having a convex first surface and an essentially concave second surface with a plurality of flexible fingers disposed on the concave second surface. Examiner has categorically stated on the record that "Adoma fails to teach a plurality of flexible fingers on the second surface of the disk-shaped body."¹⁰ Appellant asserts that the Examiner is improperly rejecting claim 1 under 35 U.S.C. §102 and improperly rejecting claims 1-5 and 13 under 35 U.S.C. §103 because the flexible fingers on the concave second surface is neither disclosed in a single reference, nor taught or suggested in any combination of the cited references of record.

A. Appellant's claim 1 has been finally rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Adoma.

A1. Appellant's claim 1 has been finally rejected under 35 U.S.C. 102(b) as being anticipated by Adoma. Adoma does not anticipate the claimed invention because Adoma does not teach every element and limitation of claim 1.

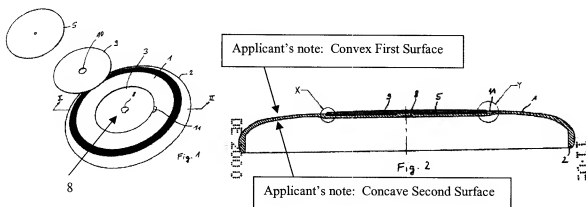
The standard for anticipation is clear. As the Federal Circuit set forth in *Connell v. Sears, Roebuck & Co.*,^{722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983)}: "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claims...A prior art disclosure that almost meets that standard does not anticipate." A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹¹ The identical invention must be shown in as complete

¹⁰ See, page 4 top of second paragraph from the bottom Examiner's Office Communication dated April 27, 2004

¹¹ *MPEP 2131*.

detail as is contained in the claim and the elements must be arranged as required by the claim.¹²

Appellant asserts that the claim element “**a plurality of flexible fingers disposed ... on said second surface and protruding for a predetermined distance away from said second surface**” in independent claim 1 is not included in Adoma or in Examiner’s analysis of Adoma. Appellant notes that an anticipation analysis should be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and satisfactory explanations for such findings.¹³ As shown below in Figs. 1 and 2 of Adoma, a clamping device 8 is located on a **convex first** surface. In contrast, in Appellant’s claim 1, the second limitation includes the element a plurality of flexible fingers disposed on the **concave second** surface shown below in Fig. 7 of the instant specification. Clearly there is no showing of flexible fingers or for that matter a clamping device 8 on the concave second surface of Adoma. Therefore, Appellant asserts that Examiner’s anticipation rejection of claim 1 under 35 U.S.C. §102(b) is improper and that the Examiner has failed to establish a *prima facie* case of anticipation.



¹² *Id.*, citing *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990); Also see, *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1990).

¹³ *Gechter v. Davidson*, 116 F.3d 1454, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997).

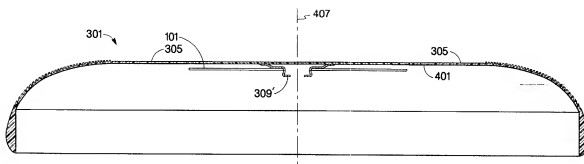


Fig. 7

As Appellant noted above the Examiner in the Office Communication dated April 27, 2004 categorically stated that "Adoma fails to teach a plurality of flexible fingers on the second surface," and then appears -- in all subsequent Office Communications -- to have changed positions without placing on the record any reasoned analysis for the change in position. Appellant asserts that it is not enough that the prior art reference disclose all the claimed elements in isolation. The Federal Circuit has held that "anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*."¹⁴ In addition, the Federal Circuit has held that the anticipation determination is viewed from one of ordinary skill in the art: "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention."¹⁵ Appellant asserts that one of ordinary skill in the art of Frisbees would readily recognize the differences between Fig. 7 of the instant specification and Figs. 1 and 2 of Adoma. Separate from whether or not Adoma discloses a plurality of flexible fingers, Appellant believes Examiner has misinterpreted Adoma or failed to recognize that Adoma places the clamping device on the top or convex surface and does not disclose or even suggest placing the clamping device on the concave under surface or second surface as claimed in the instant case. Examiner

¹⁴ *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. Denied, 469 U.S. 851 (1984) (citing *Soundsciber Corp. v. United States*, 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl. 1966)). Adopted, 149 USPQ 640 (Ct. Cl. 1966)).

¹⁵ *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

has made no such reasoned argument part of the record that Adoma either discloses, teaches or suggests placing the clamping device on the concave under surface. In addition, the anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention.¹⁶ Appellant believes that Adoma does not describe Appellant's claimed invention with sufficient clarity and detail in regards to placing the plurality of flexible fingers, which serve as a clamping device, on the **concave second** surface as shown above in Fig. 7 of the instant specification. Even if Examiner interprets Appellant's claim language in functional manner, which Appellant strongly disagrees with, MPEP 2114 states that even if the prior art device performs all functions recited in the claim, the prior art cannot anticipate the claim if there is any structural difference.

It is clear that the Adoma reference cited by the Examiner does not disclose the claimed elements and limitations arranged as in Appellant's claim, because the clamping device 8 of the Adoma reference is on the **convex first** surface, whereas in Appellant's claim, the **flexible fingers** which serve as a clamping device or concentric hub are on the **concave second** surface. Appellant strongly disagrees with Examiner that Adoma shows the claim element "a **plurality of flexible fingers** disposed in a first circle on said **second surface** and protruding for a predetermined distance away from said second surface." In addition, Adoma also clearly does not disclose a plurality of flexible fingers. Adoma in describing concentric clamping device 8 simply states that it is constructed in a known manner so that the compact disk 9 is clamped by being locked in its concentric opening. Again Appellant refers to MPEP 2114 which states that Adoma cannot anticipate Appellant's claim if there is any structural difference. For Examiner to assert that Adoma discloses a plurality of flexible fingers disposed in a first circle, Examiner must either use Appellant's instant specification or some additional prior art reference since Examiner has not placed anywhere in the record a reasoned argument how and where Adoma makes such a disclosure other than the conclusory

¹⁶ *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 48 USPQ2d 1321, 1328 (Fed Cir. 1998) (citing *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

statement that Adoma teaches all of the claim limitations of independent claim 1 at issue. Thus, Adoma not only does not disclose a clamping or concentric hub on the concave second surface, but also does not disclose a plurality of flexible fingers disposed on the second concave surface for attaching the compact disk to the throwable implement.

Thus, Appellant asserts that Adoma, clearly by itself, is an insufficient reference to establish anticipation under 35 U.S.C. §102 (b), since Adoma does not disclose “**a plurality of flexible fingers disposed in a first circle on said second surface.**” Therefore, Appellant believes Adoma does not anticipate Appellant’s claimed invention. Accordingly, Appellant believes that Examiner’s rejection under 35 U.S.C. §102(b) as being anticipated by Adoma is improper and Examiner has failed to state a case for anticipation.

A2. Appellant’s claim 1 has been finally rejected in the alternative under 35 U.S.C. §103(a) as obvious over Adoma given a different interpretation of claim 1.

Since Examiner has also maintained an additional rejection of claims 1, 2, and 13 under 35 U.S.C. §103(a) as being unpatentable over the single reference of Adoma, Appellant reserves the bulk of the 103 arguments for the 35 U.S.C. §103(a) rejections rather than repeat arguments multiple times. Here Appellant only addresses Examiner’s statement that given an alternative interpretation of claim 1, Adoma may fail to teach a plurality of flexible fingers. Again, Appellant notes as discussed above that Examiner has admitted on the record that Adoma does not teach a plurality of flexible fingers disposed on the second concave surface of the disk shaped body.¹⁷ As noted above, separate from whether or not Adoma discloses a plurality of flexible fingers, Examiner’s failure to place on the record any reasoned argument how Adoma either discloses or suggests placing the clamping device on the

¹⁷ See, *Supra* 10.

concave second surface makes moot Examiner's conclusory statement that it would have been obvious for one of ordinary skill in the art to incorporate a plurality of flexible fingers on the implement of Adoma. Examiner must consider Appellant's claimed invention as a whole.¹⁸ Thus, Appellant asserts that Adoma, by itself, is also an insufficient reference to establish obviousness under 35 U.S.C. §103(a), since Adoma does not teach, suggest, or provide any motivation to combine with another reference showing **"a plurality of flexible fingers disposed in a first circle on said second surface."** Therefore, Appellant believes Appellant's claimed invention is not obvious in view of Adoma. Accordingly, Appellant believes that Examiner's rejection under 35 U.S.C. §103(a) as being obvious in view of Adoma is improper and Examiner has failed to state a *prima facie* case for obviousness.

In addition, Appellant believes Examiner's rejection in the alternative is improper. MPEP 706.02(n) states under Examiner note in regards to form paragraph 7.27 that this "form paragraph is NOT intended to be commonly used as a substitute for a rejection under 35 U.S.C. 102. In other words, a single rejection under either 35 U.S.C. 102 or 35 U.S.C. 103(a) should be made whenever possible" Appellant asserts that none of the examples given are applicable to Appellant's claim 1. Appellant notes that Examiner has not placed in the record any assertion that Adoma inherently teaches Appellant's claimed invention,¹⁹ any assertion invoking MPEP 2112.01 stating that when the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same the applicant has the burden of showing that they are not, or any assertion that Appellant's claim 1 is a product-by-process claim.²⁰ Since Examiner has not placed any rationale in the record for using this alternative form of rejection and Appellant is unable to identify any example in the MPEP that reasonably applies to Appellant's case, then Appellant asserts this alternative form of rejection is improper.

¹⁸ MPEP 2141.02.

¹⁹ MPEP 2112(III).

²⁰ MPEP 2113.

B. Appellant's claims 1, 2, and 13 have been finally rejected under U.S.C. §103(a) as being unpatentable over Adoma. Adoma does not teach, or suggest Appellant's claims 1, 2, and 13.

In order for the Examiner to establish a *prima facie* case of obviousness, there must be (i) some suggestion or motivation, in the prior art itself, to modify the reference or to combine reference teachings, (ii) a reasonable expectation of success, and (iii) the prior art references must teach or suggest each element of the claims.²¹ "The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. 'To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.' *Ex parte Clapp*, 227 USPQ 972, 973 (Board of Patent Appeals and Interferences 1985)."²²

B1. Adoma does not teach, or suggest Appellant's claim 1.

Appellant asserts that Examiner fails to establish a *prima facie* case of obviousness by failing to show that Adoma expressly or impliedly suggests Appellant's claimed invention and/or Examiner fails to present a convincing line of reasoning that the modifications of Adoma required to make Appellant's claimed invention are obvious. Appellant notes that the "rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law."²³ However, official notice unsupported by documentary evidence should only be taken by the examiner

²¹ MPEP 706.02(j).

²² *Id.*

²³ MPEP 2144, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1992) and a number of other cases.

where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known.²⁴ In addition, Appellant emphasizes that "[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known."²⁵

Clearly Adoma discloses a compact disk attached to a throwable disk by removably affixing the compact disk to a convex first surface or the top surface of the throwing disk by providing a recess part 3 in the central part or mid-section 1 of the convex first surface of the throwable disk. Clamping device 8 is utilized to clamp the compact disk 9 in the recess part 3, and then covering the cavity formed by the recessed part 3 with a cover 5 as shown in Figs. 1 and 2 above. Appellant asserts that removing the lid, removing the recessed part 3, reforming a normal convex surface, then forming the clamping device 8 on the bottom or concave surface of the throwing implement, and securing a CD to the redesigned throwing implement are clearly not expressly or impliedly suggested by Adoma. In addition, Examiner has presented no convincing line of reasoning supporting the theory that such modifications would be obvious in light of Adoma. Further, such a series of modifications are not facts asserted to be well known and capable of instant and unquestionable demonstration as being well-known. Thus, for these reasons alone Appellant believes that the Examiner has failed to state a *prima facie* case of obviousness. In addition, as stated in the MPEP 2142, the prior art references when combined must teach or suggest all of the claim limitations. Clearly, Adoma by itself does not teach or suggest all of the claim limitations of Appellant's claim 1.

Consequently, Adoma is an insufficient reference and the Examiner's statement that it would be obvious to incorporate flexible fingers in Adoma does not cure that insufficiency because Adoma does not teach or suggest the possibility of mounting and

²⁴ MPEP 2144.03, citing *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970).

²⁵ *Id.*

demounting a compact disk with a plurality of fingers on the concave second surface of a gyroscopically stabilized throwable implement by the virtue that there is no indication of a clamping mechanism on the concave second surface in Adoma. The Examiner must show a clamping mechanism on the concave second surface of Adoma or Adoma in combination with Examiner's remarks providing a rationale for the obviousness rejection. The level of skill in the art cannot be relied upon to provide the suggestion to combine references.²⁶ As a result, Appellant believes that the Examiner's reliance on Adoma, combined with Examiner's comments fail to distinguish the clamping mechanism on the convex first surface cited in Adoma from the plurality of flexible fingers on the essentially concave second surface as claimed by Appellant in claim 1. Appellant, thus, asserts that clearly the Examiner has not shown any evidence of "obviousness to one of ordinary skill in the arts" and therefore Adoma, is insufficient to establish a case of obviousness under 35 U.S.C. §103(a), since Adoma does not teach or suggest all of the claimed limitations such as ***an essentially concave second surface; and a plurality of flexible fingers disposed in a first circle on said second surface.***

Appellant also notes that there are four factual inquires that an examiner must go through for determining obviousness.²⁷ The first two inquires are (A) determining the scope and contents of the prior art and (B) ascertaining the differences between the prior art and the claims in issue.²⁸ Clearly, Examiner's repeated assertion that "Adoma may fail to teach a plurality of flexible fingers indicates that Examiner has either misinterpreted the scope and contents of Adoma or failed to ascertain the differences between Adoma and independent claim 1 of the instant case. This misinterpretation or failure to ascertain by the Examiner is further highlighted by the Examiner providing no reasoned argument but only repeating the bald conclusory statement that "it would be obvious to incorporate a plurality of flexible fingers on the implement of Adoma for the purpose of retaining the compact disk." In response to

²⁶ MPEP 2143.01 citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

²⁷ MPEP 2141(I).

²⁸ *Id.*; noting that the other two factors are (C) resolving the level of ordinary skill in the pertinent art, and (D) evaluating evidence of secondary considerations.

Appellant's arguments that Adoma does not place the clamping device 8 on the concave side of the throwing implement, Examiner simply responds that "Adoma meets 'an essentially concave second surface' as clearly shown in figure 2" on page 4 of the final Office action dated September 29, 2005. In regards to the latter statement, the Examiner appears to fail to recognize that Appellant is not arguing whether Adoma includes a concave second surface but rather Appellant is arguing that Adoma does not teach or suggest a plurality of flexible fingers on the concave second surface.

Further, the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art also suggests the desirability of the modification.²⁹ In regards to the single reference rejection based on Adoma, Examiner has provided no reasoned argument that Adoma suggests the desirability of the modifications noted above. Examiner simply states that Adoma teaches that "clamping device 8 is constructed in a known manner so that the compact disk can be locked in the opening 10," and that it would be obvious to incorporate a plurality of fingers in the throwing implement of Adoma. Appellant strongly disagrees with Examiner since Adoma teaches that an essential element of Adoma's invention is the cover 5 which is preferably held in place clamped (See Fig. 3 and 4 of Adoma), so that the edge region of the cover or of the recessed part is arranged a continuous or discontinuous reinforcement, which is engaged so that it is clamped in a corresponding notch in the edge region of the recessed part or of the cover. The fact that Adoma teaches the secure mounting of the cover 5 to the edge of the recessed part is further strengthened where Adoma teaches that to make it possible to detach the cover and remove the object, in particular a compact disk, from the cavity, the mid section is preferably provided with a recessed grip in the edge region of the cavity. Arguably there are a myriad number of techniques that can be utilized to attach the compact disk of Adoma to the

²⁹ MPEP 2143.01(III), ("The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. Citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed Cir. 1990)).

recessed part. Because Adoma teaches the use of a cover securely attached to the throwable implement, Appellant argues there is no motivation to modify Adoma to include a plurality of flexible fingers let alone such plurality disposed on the convex side, since to both securely attach the compact disk to the recessed part and then to securely attach the cover to the edge of the recessed part is a redundancy that Adoma simply does not discuss. Further, Appellant notes that the clamping device 8 shown in Adoma arguably may be described as a centering hub (see Fig. 1 of Adoma) which is consistent with the use of a cover securely attached to the throwing implement. That is, the clamping device 8 need only center the compact disk within the recessed part since the convex shape of the cover and the securing of the cover to the edge of the recessed part securely holds the compact disk from moving up or down within the cavity thus providing no motivation to modify Adoma since Adoma does not identify any problem with the design utilized.³⁰

Appellant also asserts Examiner has failed to provide in the record any motivation found in Adoma or as common knowledge to modify Adoma. Examiner appears to rely on common knowledge to provide the motivation to modify Adoma in stating that the purpose of Examiner's proposed modification is to retain the compact disk when Adoma already teaches a centering hub structure to so retain the compact disk. Appellants argue that the general skill in the art will rarely operate to supply missing knowledge or prior art to reach an obviousness judgment. "To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."³¹

³⁰ Identification of a problem in the prior art is generally a factor that will show non-obviousness. See, *In erg Nomiya*, 509 F.2d 566, 184 USPQ 607, 612 (C.C.P.A. 1969). In addition, even if Examiner argues that Appellant's use of flexible fingers provides some motivation (which is not yet in the record) Appellants note that the problem itself must also be known to one of ordinary skill in the manner that suggests or motivates the modification needed to arrive at Appellant's claimed invention. See, e.g. *In re Greene*, Civ. App. No. 99-1317 (Fed Cir. Dec. 6, 1999) (unpublished).

³¹ *W.L. Gore Assocs. v. Garlock, Inc.* 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), cert. Denied, 469 U.S. 851 (1984).

Examiner also may be inferring that Examiner's proposed modification to Adoma is a mere design choice; again without placing that reasoned argument in the record. However, Appellant argues that the Examiner must provide sound sufficient reasoning why a specific feature is a matter of design choice and therefore obvious.³²

The solution provided by Adoma works well for its intended purpose of increasing the efficiency of advertising. Adoma does not provide a suggestion or motivation to develop alternate methods for attaching a compact disk to a throwable disk. The arrangement of forming the recessed part 3 and then covering the cavity so formed found in Adoma arguably preserves the aerodynamic properties of the throwable disk. However, Adoma teaches that the recessed part, the cover, and the element attaching the cover, are all essential elements of Adoma. The absence of these essential elements creates at least three problems. First, the compact disk 9 would be on the convex first surface in a high airflow area thereby negatively impacting the flying performance of the throwable disk by creating extra drag and turbulence. Second, the cover would no longer be available to securely hold the compact disk within the recessed part and thus, the clamping device would have to be the sole method of holding the compact disk to the throwable disk. Third, the cover would no longer be available as a separate throwing disk.

In addition, in mounting the compact disk to the concave second surface, the compact disk is not readily visible. This lack of ready visibility goes against the purpose of increasing the efficiency of advertisement, by including the compact disk in the throwable disk where it is readily visible, as described by Adoma. Appellant on the other hand, in those applications desiring an additional form of advertisement, solves this problem of presenting the compact disk in a visible form for advertisement attached to a throwable disk in a clever unexpected way. Appellant notes that the

³² *In re Chu*, 66 F.3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995).

central portion of the throwable disk may be made optically clear such that the compact disk is readily visible from the convex first surface. Adoma is silent on the utilization of a transparent optically clear central portion of the throwable disk to enhance the visibility of a compact disk mounted to the concave bottom surface. Also, Appellant mounts the compact disk on the concave second surface of the throwable disk where air velocity is low so that the drag associated with the attached compact disk does not degrade the aerodynamic properties of the throwable disk and thus the flight of the throwable disk. Hence, in Appellant's invention, the top surface of the throwable disk retains the favorable classically recognizable shape of a throwable disk also known as a FrisbeeTM without the need for the essential elements of the recessed part and the top protective cover on the convex first surface of the throwable disk as taught by Adoma.

Further, Appellant notes that arguably Adoma teaches away or suggests the undesirability of attaching a CD or other such device to the bottom concave surface since Adoma teaches that there is a need to increase the efficiency of advertising. This is also emphasized by Adoma teaching that the cover can be constructed as a transparent object so that the content of the cavity remains visible, i.e. enhances the efficiency of advertising because it can be seen whereas by mounting to the underside would arguably be less efficient. Adoma also teaches that the desirability of using the cover for alternative uses by teaching that the cover can be constructed as a disk for throwing and utilized separately from the main disk. Arguably such desirability is lost by mounting the device to the underside since there is no longer a need for the cover. Adoma teaches that the flat cavity that is several millimeters high can be used to load flat objects such as advertising materials which would either not be possible or at a minimum would be substantially hindered by removing the cavity and placing the clamping device on the underside of the implement because the advertising material would now have to have a hole through which it could be mounted to the clamping device. Appellant asserts that trade-offs often

concern what is feasible, not what is desirable.³³ Thus, the benefits both lost and gained, should be weighed against one another.³⁴ In the instant case Appellant argues that the one of ordinary skill in the art would not reasonably elect to trade all of the benefits lost in modifying Adoma with the benefit of added compact disk protection found in Appellant's claimed invention.

As noted above, in order for Appellant's claimed invention to be obvious in view of Adoma, numerous changes must be made to Adoma that essentially require substantial reconstruction or redesign of Adoma. It has been held that an obviousness rejection is not appropriate if substantial reconstruction or redesign of the prior art references is necessary to arrive at the claimed invention.³⁵ Clearly, removing the lid, removing the recessed part 3, reforming a normal convex surface, then forming the clamping device 8 on the bottom or concave surface of the throwing implement, and securing a CD to the bottom or underneath side of the throwing instrument arguably involves substantial reconstruction of the device taught by Adoma.

Since the Examiner has not correctly determined the scope and contents of Adoma, and/or has failed to ascertain the differences between Adoma and claim 1 at issue; Appellant asserts that Adoma, as a single reference, is an insufficient reference to establish obviousness under 35 U.S.C. §103 (a), since Adoma does not teach or suggest ***"a plurality of flexible fingers disposed in a first circle on said second surface,"*** as claimed in independent claim 1. Therefore, Appellant believes Adoma by itself does not establish a *prima facie* case of obviousness against Appellant's claimed invention. Accordingly, Appellant believes that Examiner's rejection under 35 U.S.C. §103(a) as being obvious in view of Adoma is improper and Examiner has failed to state a case for obviousness based on Adoma.

³³ *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 53 USPQ2d 1580 (Fed Cir.), *cert. Denied*, 530 U.S. 1238 (2000).

³⁴ *Id.*, 53 USPQ2d at 1587 n. 8.

³⁵ *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (C.C.P.A. 1959).

B2. Adoma does not teach, or suggest Appellant's claim 13.

Examiner has also rejected dependent claim 13 which claims a depression disposed in the concave second surface, having an essentially flat bottom and centered on the axis of rotation of the implement. Examiner has placed nothing in the record to support Examiner's rejection of claim 13 based on the single reference of Adoma. As noted above in the arguments presented in **A** and **B1** the Examiner appears to fail to recognize that Adoma includes a concave second surface and Adoma does not include a plurality of flexible fingers on the concave second surface. In view of the lack of any reasoned argument by the Examiner, Appellant noted in Appellant's response dated June 1st, 2005 on page 8 that Examiner must present a convincing line of reasoning supporting the Examiner's rejection. In addition, Appellant requested, in the response dated June 1st, 2005 on the top of page 9 that Examiner either cite a particular reference or provide an affidavit that includes specific factual findings predicated on sound technical and scientific reasoning to support Examiner's conclusion of common knowledge and mere engineering choice if that is the basis of Examiner's rejection.³⁶ Examiner has provided no affidavit nor response and therefore the record remains blank as regards to the reasons for rejection of dependent claim 13.

Since the Examiner has not provided any argument how or why Appellant's claimed invention in dependent claim 13 is obvious in view of Adoma, Appellant asserts that Adoma, as a single reference, is an insufficient reference to establish obviousness under 35 U.S.C. §103 (a), and since Appellant asserts that Adoma does not teach or suggest the claimed elements and limitations as arranged in dependent claim 13. Therefore, Appellant believes Adoma by itself does not establish a *prima facie* case of obviousness against Appellant's claimed invention in regards to dependent claim 13. Accordingly, Appellant believes that Examiner's

³⁶ See, MPEP 2144.03 and also *see*, 37, C.F.R. §1.104(d)(2).

rejection of claim 13 under 35 U.S.C. §103(a) as being obvious in view of Adoma is improper and Examiner has failed to state a case for obviousness based on Adoma.

B3. Adoma does not teach, or suggest Appellant's claim 2.

Examiner has also rejected dependent claim 2, which depends on claim 13, and discloses a lip edge forming a peripheral boundary of the depression at the concave second surface. Examiner has placed nothing in the record to support Examiner's rejection of claim 2 based on the single reference of Adoma. As noted above in the arguments presented in **A** and **B1** the Examiner appears to fail to recognize that Adoma includes a concave second surface and Adoma does not include a plurality of flexible fingers on the concave second surface. In view of the lack of any reasoned argument by the Examiner, Appellant noted in Appellant's response dated June 1st, 2005 on page 8 that Examiner must present a convincing line of reasoning supporting the Examiner's rejection. In addition, Appellant requested, in the response dated June 1st, 2005 on the top of page 9 that Examiner either cite a particular reference or provide an affidavit that includes specific factual findings predicated on sound technical and scientific reasoning to support Examiner's conclusion of common knowledge and mere engineering choice if that is the basis of Examiner's rejection.³⁷ Examiner has provided no affidavit or response and therefore the record remains blank as regards to the reasons for rejection of dependent claim 2.

Since the Examiner has not provided any argument how or why Appellant's claimed invention in dependent claim 2 is obvious in view of Adoma, Appellant asserts that Adoma, as a single reference, is an insufficient reference to establish obviousness under 35 U.S.C. §103 (a), and since Appellant asserts that Adoma does not teach or suggest the claimed elements and limitations as arranged in dependent claim 2. Therefore, Appellant believes Adoma by itself does not establish a *prima facie* case of obviousness against Appellant's claimed invention in regards

³⁷ See, MPEP 2144.03 and also see, 37, C.F.R. §1.104(d)(2).

to dependent claim 2. Accordingly, Appellant believes that Examiner's rejection under 35 U.S.C. §103(a) as being obvious in view of Adoma is improper and Examiner has failed to state a case for obviousness based on Adoma.

C. Appellant's claims 1-5 and 13 have been finally rejected under U.S.C. §103(a) as being unpatentable over Adoma in view of Nusselder or Otsuka et. al.

According to MPEP §2142. In order for the Examiner to establish a *prima facie* case of obviousness, there must be (i) some suggestion or motivation, in the prior art itself, to modify the reference or to combine reference teachings, (ii) a reasonable expectation of success, and (iii) the prior art reference (or references when combined) must teach or suggest all the claimed limitations.

The burden of establishing a *prima facie* case of obviousness can only be satisfied by a showing of some objective teaching in the prior art that would lead an individual to combine the relevant teachings of the references. Under Section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art also suggests the desirability of the modification. It is the duty of the examiner to explain why the combinations of the teachings are proper.

The law is "clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."^{38 39}

Appellant's invention, as claimed, is "A gyroscopically stabilized throwable implement comprising: a disk-shaped body having an essentially convex first surface and an essentially concave second surface: and a plurality of flexible fingers disposed in a first circle on said second surface and protruding for a predetermined

³⁸ In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (citations omitted).

³⁹ Ecologchem, Inc. v. Southern California Edison Co., 227 F.3d 1361, 1371, 56 USPQ2d 1065, 1073 (Fed. Cir. 2000).

distance away from said second surface, said first circle having a center essentially concentric with an axis of rotation of the implement." The flexible fingers may hold an object such as a compact disk. It is Appellant's belief that the Examiner has failed to consider the invention as a whole. Rather than ascertaining whether or not the cited reference teaching would appear to be sufficient for one of ordinary skill in the art to make the combination, Appellant believes the Examiner is incorrectly construing various elements disclosed in the prior art of record to read on Appellant's claimed invention using Appellant's claimed invention as a template to combine the various elements found in the cited references.⁴⁰ Further, as stated in MPEP §2141.02, the Examiner must consider the claimed invention 'as a whole'. The Examiner must consider the prior art in its entirety, as stated in §MPEP 2141.02. Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole."⁴¹

C1. Neither the combination of Adoma in view of Nusselder, nor Adoma in view of Otsuka, teaches or suggests all claim limitations of claims 1 and 3-5.

As stated in the MPEP §2142, the prior art references when combined must teach or suggest **all** of the claim limitations. From the arguments given above in **A** and **B**, Adoma is an insufficient reference because Adoma fails to teach or suggest several limitations claimed by Appellant in independent claim 1. Adoma does not teach, or suggest the claimed invention by virtue that there is no indication of a clamping retention apparatus in the concave second surface in Adoma. Furthermore, Otsuka et. al. is a holder tray for a disk and Nusselder is a storage cassette for disks. Both of these references do not teach or suggest, placement of a compact disk on a gyroscopically stabilized throwable implement comprising a disk-shaped body having an essentially convex first surface and an essentially **concave second surface** and a **plurality of flexible fingers** disposed in a first circle on said **second surface** and

⁴⁰ *In re Lintner*, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA 1972).

⁴¹ MPEP 2141.02 citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert denied*, 469 U.S. 851 (1984).

protruding for a predetermined distance away from said second surface. Appellant asserts that clearly Nusselder and Otsuka fail to overcome the deficiencies of Adoma. Thus, Appellant asserts "***an essentially concave second surface; and a plurality of flexible fingers disposed in a first circle on said second surface,***" is not taught, nor suggested by any of the cited references individually or in combination. Consequently, Appellant believes Adoma, neither by itself nor in combination with Nusselder nor in combination with Otsuka is sufficient to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a) and therefore does not render Appellant's claimed invention obvious.

In addition, there must be a basis in the art for combining or modifying references. There must be some suggestion or motivation, in the prior art itself, to modify the reference or to combine reference teachings. Adoma in teaching the use of a compact disk mounted to the convex first surface of a throwable disk, whereby the compact disk is overlayed with a transparent cover for the purpose of protecting and retaining the compact disk to increase the efficiency of advertisement does not provide any motivation or suggestion to modify either Nusselder or Otsuka to place a compact disk on the concave second surface of the throwable disk. Likewise neither Nusselder nor Otsuka provide any motivation or suggestion to modify Adoma to place a compact disk on the concave second surface of the throwable disk. The references of Nusselder and Otsuka teach mounting of a compact disk in a compact disk "jewel" case. The combination of either Adoma and Nusselder or Adoma and Otsuka are silent on the motivation for mounting a compact disk to the concave second surface of a FrisbeeTM. Therefore, no motivation for mounting a compact disk to the concave second surface of a FrisbeeTM has been provided by the references cited by the Examiner. Appellant asserts that the combination of either Adoma and Nusselder or Adoma and Otsuka teaches away from the placement of the compact disk on the concave second surface of the throwable disk as argued above for Adoma as a single reference.

Accordingly, Appellants believe the Examiner's rejection of claims 1 and 3-5 under 35 U.S.C. §103(a) as being unpatentable over Adoma in view of Nusselder and Otsuka is improper and Examiner has failed to state a case for obviousness.

C2. Neither the combination of Adoma in view of Nusselder, nor Adoma in view of Otsuka, teaches or suggests all claim limitations of claim 13.

Examiner has also rejected dependent claim 13 which claims a depression disposed in the concave second surface, having an essentially flat bottom and centered on the axis of rotation of the implement. Examiner has placed nothing in the record to support Examiner's rejection of claim 13 based on either the single reference of Adoma as discussed above or to support Examiner's rejection of claim 13 based on Adoma in view of Nusselder or Adoma in view of Otsuka. As noted above in the arguments presented in **A** and **B** the Examiner appears to fail to recognize that Adoma includes a concave second surface and Adoma does not include a plurality of flexible fingers on the concave second surface.

Since the Examiner has not provided any argument how or why Appellant's claimed invention in dependent claim 13 is obvious in view of the combination either of Adoma and Nusselder or of Adoma and Otsuka, Appellant asserts that neither of these combinations establishes a *prima facie* case for obviousness under 35 U.S.C. §103 (a). Appellant asserts that neither the combination of Adoma and Nusselder nor of Adoma and Otsuka teaches or suggests the claimed elements and limitations as arranged in dependent claim 13. Accordingly, Appellant believes that Examiner's rejection of claim 13 under 35 U.S.C. §103(a) as being unpatentable over Adoma in view of either Nusselder or Otsuka is improper and Examiner has failed to state a case for obviousness based on these combinations.

C3. Neither the combination of Adoma in view of Nusselder, nor Adoma in view of Otsuka, teaches or suggests all claim limitations of claim 2.

Examiner has also rejected dependent claim 2, which depends on claim 13, and discloses a lip edge forming a peripheral boundary of the depression at the concave second surface. Examiner has placed nothing in the record to support Examiner's rejection of claim 2 based on either the single reference of Adoma as discussed above or to support Examiner's rejection of claim 13 based on Adoma in view of Nusselder or Adoma in view of Otsuka. As noted above in the arguments presented in **A** and **B** the Examiner appears to fail to recognize that Adoma includes a concave second surface and Adoma does not include a plurality of flexible fingers on the concave second surface.

Since the Examiner has not provided any argument how or why Appellant's claimed invention in dependent claim 2 is obvious in view of the combination either of Adoma and Nusselder or of Adoma and Otsuka Appellant asserts that neither of these combinations establishes a *prima facie* case for obviousness under 35 U.S.C. §103 (a). Appellant asserts that neither the combination of Adoma and Nusselder nor of Adoma and Otsuka teaches or suggests the claimed elements and limitations as arranged in dependent claim 13. Accordingly, Appellant believes that Examiner's rejection of claim 2 under 35 U.S.C. §103(a) as being unpatentable over Adoma in view of either Nusselder or Otsuka is improper and Examiner has failed to state a case for obviousness based on these combinations.

Conclusion

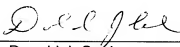
The Examiner has erred in failing to establish a case of:

- anticipation or in the alternative obviousness in rejecting claim 1 over Adoma;
- obviousness in rejecting claims 1,2, and 13 over Adoma in view of Examiner's comments; and
- obviousness in rejecting claims 1-5 and 13 over Adoma in view of Nusselder or obviousness over Adoma in view of Otsuka.

Appellant respectfully requests reversal of these rejections from the Board of Patent Appeals and Interferences, along with timely issuance of a notice of allowance indicating that claims 1-5 and 13 are allowed.

Appellant will defer his decision as to whether or not to request oral argument until after receipt of the Examiner's Answer to this Appeal Brief.

Respectfully submitted,
Gabriel Beged-Dov

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8. Claims Appendix

1. (previously presented) A gyroscopically stabilized throwable implement comprising:

a disk-shaped body having an essentially convex first surface and an essentially concave second surface; and

a plurality of flexible fingers disposed in a first circle on said second surface and protruding for a predetermined distance away from said second surface, said first circle having a center essentially concentric with an axis of rotation of the implement.

2. (previously presented) A gyroscopically stabilized throwable implement in accordance with claim 13 wherein said body further comprises a lip edge forming a peripheral boundary of said depression at said second surface.

3. (previously presented) A gyroscopically stabilized throwable implement in accordance with claim 1 wherein said plurality of fingers further comprise an attachment portion affixed to said second surface in a second circle concentric with said first circle and having a radius greater than said first circle and a cantilever portion, elevated and essentially parallel to said second surface, and disposed between said attachment portion and said first circle.

4. (previously presented) A gyroscopically stabilized throwable implement in accordance with claim 3 wherein said plurality of fingers further comprise a crooked portion directed toward the axis of rotation, disposed essentially parallel to said second surface, and elevated by a predetermined distance from said second surface.

5. (previously presented) A gyroscopically stabilized throwable implement in accordance with claim 1 wherein said plurality of fingers further comprise a ridge

portion disposed at an end of each said finger spaced away from said second surface, at said first circle, and projecting away from said axis of rotation.

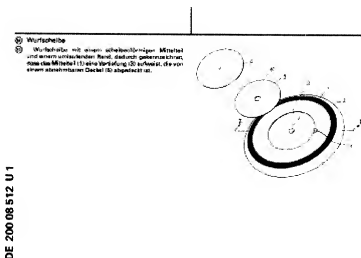
6. to 12. (cancelled)

13. (previously presented) A gyroscopically stabilized throwable implement in accordance with claim 1, further comprising a depression disposed in said second surface, having an essentially flat bottom, and centered on said axis of rotation of the implement.

14. to 15. (cancelled)

9. Evidence Appendix

Translation of Adoma provided by Appellant's response on 6/1/2005 is included herewith.



(19) FEDERAL REPUBLIC (12) UTILITY MODEL PUBLICATION (51) Int.
CL⁷:

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GERMAN PATENT AND
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(21) Reference Number: 200 08 512.3
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DE 200 08 512 U1

(73) Owner: Adoma, GmbH, 88239 Wangen, Germany

(74) Representative: Riebling, P., Dipl. Ing., Patent Attorney, 88131, Lindau

(54) Throwing Disk

(57) A throwing disk having a disk-shaped central part and a circular rim, characterized by the fact that the central part (1) is equipped with a recess (3) which is covered by a removable cover (5).

[see figure]

[page 1]

[contact information]

04.25.2000
14004.5-A1408-54

Applicant: Adoma GmbH, Pettermandstrasse 4
D-88239, Wangen im Allgäu

Throwing Disk

The invention relates to a throwing disk having a disk-shaped central part and a circular rim.

Similar types of throwing disks, also known as Frisbee disks, have been used as game devices and they are known in many embodiment forms.

It is also known that similar types of disks for throwing can be used as advertising and information carriers when they are provided with inscriptions, advertising texts, company names, etc. However, since the surface area on the throwing disk that can be used for advertising purposes is limited and the advertising effect is therefore also limited, there is a need to increase the effect of advertising.

The task of the present invention is to propose a throwing disk which can be used not only as a game device, but also as an effective advertising or information carrier.

This task is achieved in accordance with the characteristics described in independent claims.

That invention is based on the fact that the central part of the throwing disk is equipped with a recess which is covered by a removable cover. The recess and the cover define a flat cavity which can serve for installation and loading of a flat object, in particular a compact disk.

The cover is held in place preferably clamped in such a way that on the rim region of the cover or of the recess is arranged a continuous edge rim, which is engaged by being clamped by a corresponding groove in the rim region of the recess or of the cover.

When the throwing disk is used as packing for a compact disk, the recess is preferably provided with a centrally arranged clamping device, which is constructed in particular to support the concentric mounting of a clamped compact disk. The clamping device is engaged in a known manner in the concentric opening of the compact disk and locks the disk.

To facilitate the removal of the cover and retrieval of an object, in particular of a compact disk, from the cavity, the central part is preferably provided with a recessed grip in the rim region of the cavity.

In another embodiment of the invention, the cover can be constructed as well as a throwing disk and used so that it is separated from the main disk.

[page 3]

To achieve special effects or a special advertising effect, the cover can be designed as a transparent cover so that the content of the cavity is always visible.

The following is a more detailed description of the invention based on an embodiment with reference to the enclosed drawings. Further characteristics, advantages and applications of the invention will become evident from the drawings. The drawings show the following:

- Figure 1: A perspective view of the throwing disk, which is shown when the cover is removed and the compact disk retrieved,
- Figure 2: A cross section through the throwing disk along the line II-II shown in Figure 1, shown with a loaded compact disk and with an installed cover.
- Figure 3: An enlarged view of detail X from Figure 2.
- Figure 4: An enlarged view of detail Y from Figure 2.

Figure 1 shows the throwing disk, comprising a central part 2 [sic] and a rim 3 surrounding this part. The throwing disk is made for example from a plastic material, but it can be also manufactured from other suitable materials.

The central part 1 is preferably provided with a concentrically arranged recess 3 which can be covered with a cover 5. The recess 3 and the cover 5, which is placed upon it, define a flat cavity that is several millimeters high. This cavity can be used for loading of flat objects, such as for example of compact disk 9, or of other advertising materials.

To facilitate the removal of the cover 5 and retrieval of a compact disk 9 from the recess, the recess 3 is provided in the rim region with a recessed grip 11.

[page 4]

The recess 3 can be further equipped with a concentric clamping device 8, which is constructed in a known manner so that the compact disk 9 is engaged by its concentric opening 10.

Figure 2 shows a cross sectional view through the throwing disk according to this invention. The recess 3 is visible in the central part 1, which is covered by a cover 5. In the cavity created in this manner is loaded a compact disk 9, which is held clamped by means of a clamping device 8. The recessed grip 11 makes it easy to remove the cover 5.

As one can see from the figure 3 and 4, the cover 5 is provided in the area of its outer rim 6 with a continuous or interrupted edge rim 7. When the cover 5 is installed, the edge rim 7 is engaged on the central part 1 in a groove 4 arranged for this purpose in the edge region of the recess 3, so that the recess 3 is held in a clamped position in this manner. It is naturally also possible to deploy the groove in the cover and to deploy the edge rim on the edge of the recess.

[page 5]

Explanation of Symbols in the Drawings

- | | |
|----|-----------------|
| 1 | central part |
| 2 | rim |
| 3 | recess |
| 4 | rim (groove) |
| 5 | cover |
| 6 | rim |
| 7 | edge rim |
| 8 | clamping device |
| 9 | compact disk |
| 10 | opening |
| 11 | recessed grip |

[page 6]

Protected Claims

1. A throwing disk having a disk-formed central part and a circular rim, characterized by the fact that the central part (1) is provided with a recess (3), which is covered by a removable cover (5).
2. The throwing disk according to claim 1, characterized by the fact that the recess (3) and the cover (5) define a flat cavity.
3. The throwing disk according to one of the preceding claims, characterized by the fact that a continuous or interrupted edge rim is arranged in the rim region of the cover (5) or of the recess (3), which is engaged by being clamped in a corresponding groove (4) in the rim region of the recess or of the cover.
4. The throwing disk according one of the preceding claims, characterized by the fact that the cavity is designed in particular for the mounting of a compact disk (9).
5. The throwing disk according to one of the preceding claims, characterized by the fact that the cavity is provided with a concentrically arranged clamping device (8).
6. The throwing disk according to one of the preceding claims, characterized by the fact that the clamping device (8) is constructed in particular to provide a concentric, clamping support for a compact disk (9).

[page 7]

7. The throwing disk according to one of the preceding claims, characterized by the fact that the central part (1) is provided with a recessed grip (11) in the rim region of the recess (3).
8. The throwing disk according to one of the preceding claims, characterized by the fact that the cover (5) is also constructed as a throwing disk.
9. The throwing disk according to one of the preceding claims, characterized by the fact that the cover (5) is constructed as a transparent cover.
10. A throwing disk having a disk-shaped central part and a continuous rim, characterized by the fact that it is constructed as a packing for a flat object.
11. A throwing disk having a disk-shaped central part and a continuous rim, characterized by the fact that it is constructed as an envelope for a compact disk (9).

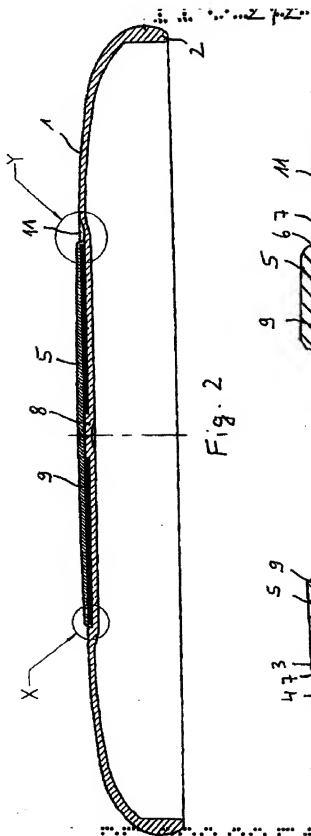


Fig. 2

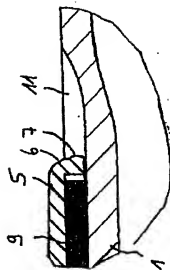


Fig. 4

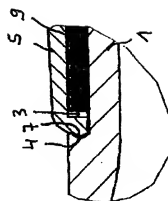
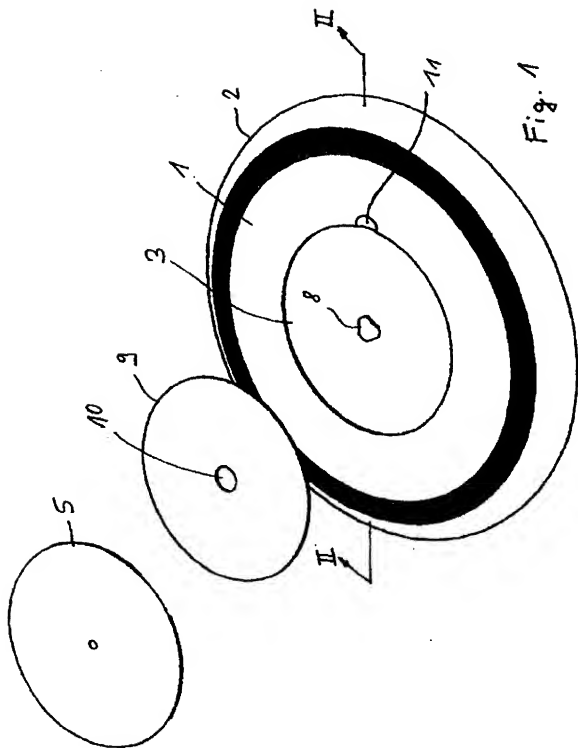


Fig. 3

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10. RELATED PROCEEDINGS APPENDIX

None presented.